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06-29-06
09:05 AM

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking on the
Commission's Own Motion for the Purpose of
Considering Policies and Guidelines Regarding
the Allocation of Gains from Sales of Energy,
Telecommunications, and Water Utility Assets.

Rulemaking 04-09-003
(Filed September 2, 2004)

**ADMINISTRATIVE LAW JUDGE'S RULING REGARDING
ALLOCATION OF GAINS ON SALE OF UTILITY ASSETS**

Summary

In Decision (D.) 06-05-041, the Commission deferred judgment on certain issues which were not adequately supported in the evidentiary record. In order to dispose of these outstanding items, the present ruling describes the issues to be decided and sets forth the process by which the parties may submit comments and, where applicable, additional briefing.

**I. Threshold Definition for What Constitutes
a "Major Facility" Across Utilities**

Section 455.5 of the Public Utilities Codes requires that utilities report to the commission when certain facilities have been taken out of service to ensure that rates are being set based on a proper assessment of those facilities. Cal. Pub. Util. Code § 455.5. The Commission seeks to define a "major facility" in such a way as to include all appropriate facilities across utilities, specifically those assets which if left in the rate base while out of service could lead to significant ratepayer overpayments. In D.06-05-041, we rejected the initial reporting threshold of a purchase price in excess of \$500,000 for a "major facility" because

it would fail to include significant assets of smaller utilities, such as a medium sized water company. Instead, the Commission found that a proportional approach that relates the value of the facility to the size of the overall utility will better achieve the purpose of the statute.

D.06-05-041 provides the following with regard to defining a “major facility”:

The parties should assume that we will define a “major facility” based on the size of the utility. Thus, the large electric, gas and water utilities will have thresholds that are higher than those of small energy providers and small water companies. The parties shall file comments in this regard within 90 days of the effective date of this decision, and may file reply comments within 30 days of receipt of the opening comments. However, before filing comments, all non-telecommunications parties shall meet and confer in an attempt to reach agreement on standard definitions of major facilities based on utility size. These parties shall report the results of their meet and confer session to the assigned administrative law judge (ALJ) before filing comments.

At a minimum, parties shall assume that the following rules will govern their negotiations and/or written proposals:

- The statute applies only to electrical, gas, heat or water corporations’ generation or production facilities. The parties should try to agree upon a common definition of “generation” and “production” that is based on either the USOA or another rational interpretation of the terms, and
- The statute applies to facilities as well as portions of facilities.

Comments on the proper threshold for a “major facility” across utilities are due in the Commission’s docket office by July 20, 2006. Reply comments are due by August 21, 2006. “File” means that the document is *received* by the

Commission's Docket Office on or before the due date at one of the following addresses:

California Public Utilities Commission
Docket Office
505 Van Ness Avenue, 2nd Floor
San Francisco, CA 94102
(415) 703-2121 (between 8:00 a.m. – 5:00 p.m.)
California Public Utilities Commission
320 West 4th Street, Ste. 500
Los Angeles, CA 90013
(213) 576-7000

California Public Utilities Commission
1350 Front Street, Room 4006
San Diego, CA 92101-3611
(619) 525-4217

The parties shall serve their comments on the e-mail service list. All comments shall be signed and include a proof of service demonstrating compliance with the Commission's e-mail service requirements in Rule 2.3.1. Service means the comment is e-mailed to the service list for this proceeding on or before the due date and, in addition, mailed in hard copy to assigned Administrative Law Judge Sarah R. Thomas at California Public Utilities Commission, 505 Van Ness Avenue, 5th Floor, Room 5105, San Francisco, CA 94102. The service list is available at http://www.cpuc.ca.gov/published/service_lists/R0409003_57114.htm or by calling (415) 702-2021 and asking for the service list for Rulemaking (R.) 04-09-003. The e-mail subject line should include the party's name and the comment title, which includes the proceeding number. All comments shall bear a signature page with the signature of an official with the commenting party, and

include a proof of service demonstrating compliance with these e-mail service requirements. Comments shall be scannable or in Word.

II. Formula for Determining the “Reasonable Rate of Return” on Contribution in Aid of Construction (CIAC) Funds

In D.06-05-041, the Commission found that under § 790 of the Water Infrastructure Act “water companies should re-invest gains from the sale of assets recorded under Contributions in Aid of Construction (CIAC) in new water infrastructure, and that the water companies may earn a reasonable rate of return on that reinvested gain.” However, the Commission deferred its determination as to what constitutes a “reasonable rate of return” on reinvested gain from the sale of CIAC property. At issue is whether this rate of return “ought to be the same as (or different from) the rate of return the utility earns on other property.”

Parties may file comments as to what would be the appropriate determination of a “reasonable rate of return” on these reinvested gains in the Commission’s docket office no later than July 20, 2006. Reply comments are due on August 21, 2006. The parties shall serve their comments on the e-mail service list following the same requirements outlined in the preceding section.

III. Sale of Utility Assets Due to Condemnation or Under Threat of Condemnation

In D.06-05-041, the Commission also deferred its determination of whether sales of utility assets due to condemnation or under threat of condemnation are covered under § 790. DRA/TURN argue that a condemnation does not qualify as a “sale” as contemplated by § 790, and as a consequence the monies received do not fall within the “net proceeds” described in the Infrastructure Act. However, the water companies challenge the Commission’s assertion that

condemnations are not covered under § 790. Instead, the water companies urge that the proceeds should be treated as “sales proceeds, and the gain or loss passed to utility shareholders.”

Parties may submit additional comment as to whether § 790 includes sales due to condemnation or under threat of condemnation by July 20, 2006, and reply comments by August 21, 2006. Filing and service shall occur in compliance with the process detailed in Section I.

IT IS RULED that:

All parties wishing to comment on the following issues:

- (A) defining “major facilities” for the purpose of § 455.5 reporting requirements,
- (B) determining reasonable rate of return on reinvested gains from sales of CIAC property; and
- (C) deciding whether § 790 applies to sales of utility assets due to condemnation or under threat of condemnation.

may file and serve comments pursuant to the process outlined in Section I by July 20, 2006, and reply comments by August 21, 2006.

Dated June 29, 2006, at San Francisco, California.

/s/ SARAH R. THOMAS

Sarah R. Thomas
Administrative Law Judge

INFORMATION REGARDING SERVICE

I have provided notification of filing to the electronic mail addresses on the attached service list.

Upon confirmation of this document's acceptance for filing, I will cause a copy of the filed document to be served upon the service list to this proceeding by U.S. mail. The service list I will use to serve the copy of the filed document is current as of today's date.

Dated June 29, 2006, at San Francisco, California.

/s/ ANTONINA V. SWANSEN

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